

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20123926
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 17, 2012
Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing from Detroit, Michigan. After due notice, a telephone hearing was held on January 17, 2012. The claimant appeared and testified; [REDACTED] appeared and testified as Claimant's authorized hearing representative and translator. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 8/11/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 9/9/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibit 1).
4. On 9/14/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 10/4/11, Claimant requested a hearing disputing the denial of MA benefits.

6. On 11/30/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (See Exhibit 35), by finding that Claimant does “not have an impairment that significantly limits the claimant’s ability to perform basic work activities.”
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female [REDACTED] with a height of 5’5 ” and weight of 190 pounds.
8. Claimant has no relevant history of tobacco, alcohol or illegal substances.
9. Claimant’s highest education year completed was the 12th grade.
10. As of the date of hearing, Claimant was not receiving medical coverage and last received coverage (Medicaid) in 6/2011.
11. Claimant alleges that she is disabled based on impairments of: high blood pressure (HBP), obesity, hyperlipidemia and vitamin D deficiency.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The controlling DHS regulations are those that were in effect as of 8/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related

categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints

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are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibit numbers.

A Medical- Social Questionnaire (Exhibits 5-7) dated [REDACTED] was presented. The DHS standardized form was completed by Claimant's daughter. It was noted that Claimant suffered the following impairments: high blood pressure, inability to speak English and inability to drive. There was no evidence that Claimant's inability to drive or speak English is based on any physical or psychological barrier. Accordingly, Claimant's inability to speak English and inability to drive are not relevant for purposes of determining whether Claimant has a severe impairment (though the inabilities may be relevant at a later step in the analysis).

It was noted that Claimant had two recent hospital encounters. Claimant had gall bladder surgery (in [REDACTED] according to other medical documents) and had regular check-ups for her high blood pressure. It was noted that Claimant was prescribed Metoprolol (100 mg \$ 2x/day), Hydrochlorothiazide (25 mg@1/day) and Losartan Potassium (50 mg@1/day). Each medication is known to treat high blood pressure.

An undated Medical Examination Report (Exhibits 8-9) was completed by Claimant's treating physician. Though a signature date was not given, the physician noted that Claimant was last treated on [REDACTED]. Current diagnoses of hypertension, hyperlipidemia vitamin D deficiency and obesity were given. An impression was given that Claimant is improving based on an improved diet; Claimant's weight was noted as 190 pounds. It was noted that Claimant cannot meet her needs in the home but the only explanation was that Claimant's daughter must attend appointments to translate and monitor medications. Attached lab results showed slightly out of range creatinine and cholesterol levels.

Claimant's daughter completed an Activities of Daily Living (Exhibits 11-15) dated [REDACTED], a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. It was noted that Claimant had trouble sleeping

due to HBP. It was noted that Claimant makes many trips to the bathroom since her illness began. It was noted that Claimant received help with cooking and cleaning. It was noted that Claimant fixes her own meals "with assistance". Claimant noted taking 20 minute daily walks and performing light housework. Claimant noted she visits with her friends and family once per month. It was also noted that Claimant has severe arthritis.

Hospital documents (Exhibits 22-34) stemming from a [REDACTED] hospital admission were presented. It was noted that Claimant was hospitalized after experiencing severe abdominal pain and vomiting. The documents appeared to be incomplete as no discharge instructions were included. Consultation notes dated [REDACTED] noted gallstone pancreatitis and probable choledocolithiasis. Presumably, the documents were related to Claimant's gall bladder removal surgery.

Claimant testified that she is restricted to two block walking limits before feeling dizzy. This seems to be contradicted by documentation which stated that Claimant performs 20 minutes of daily walking. Claimant also stated that she has a 10 minute standing limit. Claimant testified that she suffered a bloody nose three days prior to the hearing simply from standing too long. She testified that a similar incident happened two weeks prior to that. Claimant stated that she does not use any walking assistance devices and has no sitting limitations.

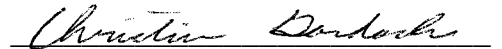
The medical evidence established that Claimant has hypertension, hyperlipidemia, vitamin D deficiency and obesity problems. None were established by medical evidence as restrictive to Claimant's basic work activity performance. There was a lab report which verified Claimant's cholesterol measured at 202 (Exhibit 10) based on a reference range of 140-199. Vitamin D deficiency is typically correctable through dieting and/or supplement. Claimant's obesity does not appear to be severe based on Claimant's height. Most importantly, there is zero medical support that Claimant is significantly affected by any of these problems.

Claimant's hypertension is a potentially serious problem but again there is little support for finding it significant restricts Claimant's basic work activity performance. It is known that Claimant takes prescriptions to address HBP but little else is known. Claimant testified that she is limited in activities but no medical support substantiated the testimony.

Even applying a de minimus standard, there is simply insufficient medical evidence to find that Claimant is significantly restricted by hypertension/HBP in the performance of basic work activities. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits by finding that Claimant was not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 24, 2012

Date Mailed: January 24, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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